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FILED

JAN X 8 2001

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 TERRY G. MARSH,

17 Defendant.

No. 96-251-SI

PLEA AGREEMENT

18
19 I, Terry G. Marsh, and the United States Attorney's Office for the Northern District
20 of California (hereafter "the government") enter into this written plea agreement (the
21 "Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to counts one and seventeen of the captioned
24 superseding indictment charging me with conspiracy to commit securities fraud in
25 violation of 18 U.S.C. §371 and making a false filing with the United States Securities
26 and Exchange Commission ("SEC") in violation of 15 U.S.C. §§ 78m(a) and 78ff, 17
27 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13. I agree that the elements of the offense of

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1 conspiracy to commit securities fraud and the maximum penalties are as follows: (1)
2 agreement with one or more to make false statements, employ a device to defraud or
3 otherwise engage in acts and practices which operate as a fraud and deceit on purchasers
4 and prospective purchasers of (2) securities (3) by use of means and instrumentalities of
5 interstate commerce and (4) at least one overt act in furtherance of the agreement.

6	a.	Maximum prison sentence	5 years
7	b.	Maximum fine	\$250,000
8	c.	Maximum supervised release term	3 years
9	d.	Mandatory special assessment	\$100
10	e.	Restitution	To be determined but
11			Not less than
12			\$16,500,000

13 I agree that the elements of making false filings with the SEC and the maximum potential
14 penalties are as follows:

15	a.	Maximum prison sentence	5 years
16	b.	Maximum fine	\$250,000
17	c.	Maximum supervised release term	3 years
18	d.	Mandatory special assessment	\$100
19	e.	Restitution	See fraud offense
20			Above

21 I also understand that, because I am pleading guilty to more than one count, the Court
22 could order that the sentences on those counts run consecutively as well as concurrently.

23 2. I agree that I am guilty of the offenses to which I will plead guilty,
24 and agree that the following facts are true:

25 a. Beginning in or about January, 1991, and continuing until
26 November, 1993, within the Northern District of California and elsewhere, I agreed
27 with Alan "Barry" Witz, Richard Bauer, Jack Dawson, Eric Brown, James T. "Tracy"

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1 Marsh, and others to make untrue statements of material facts and omit to state material
2 facts necessary in order to make statements made, in light of the circumstances under
3 which they were made, not misleading, and to engage in acts, practices and courses of
4 business which would and did operate as a fraud and deceit upon purchasers and
5 prospective purchasers of Scorpion stock, in violation of 15 U.S.C. §§ 78j(b) and 78ff(a)
6 and 17 C.F.R. 240.10b-5 promulgated thereunder.

7 b. Our scheme to defraud the investing public involved
8 inflating the reported revenues, earnings and assets of Scorpion and, based on this false
9 information, selling and aiding and abetting the sale of the Scorpion stock described in
10 the superseding indictment. Our scheme included:

11 (i) recording in Scorpion's books and records and
12 financial statements approximately twelve million dollars in sales of computer software
13 and hardware. The vast majority of these sales in fact had not occurred, but were sham
14 transactions designed to inflate falsely Scorpion's sales revenue and earnings.

15 (ii) in order to create the appearance that the supposed
16 "customers" had paid for the products they had allegedly ordered, we arranged for funds
17 to be delivered to Scorpion ostensibly as "payment" for the Scorpion products. In fact,
18 these funds were not bona fide payments for goods sold. Rather, in most cases, the
19 source of the funds was the proceeds of the sales of Scorpion stock.

20 (iii) I, on behalf of Scorpion, announced the acquisition of
21 assets which were recorded on Scorpion's books and records which either did not exist or
22 were grossly overvalued.

23 (iv) We made false statements to the auditors who were
24 responsible for auditing the financial statements of Scorpion, and to securities
25 underwriters and a financial institution.

26 (v) We incorporated these false revenues, earnings and
27 assets into Scorpion's annual and quarterly reports and into other statements made
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1 directly and indirectly to the investing public and to stock brokers.

2 (vi) Having created a materially false and misleading
3 picture of Scorpion's revenues, earnings, and assets, we sold and aided and abetted the
4 sale of millions of shares of Scorpion's common stock to a large number of investors.

5 **Creation of False Revenue on Sales to Foreign Companies**

6 c. In 1986 I became President of Scorpion Technologies, Inc.
7 (Scorpion). In early 1991, Scorpion needed financing. I had previously been introduced
8 to Alan "Barry" Witz, a Chicago lawyer who previously worked for the SEC, and was
9 then acting as president of a stock brokerage firm. Bauer and I met with him. Witz told
10 Bauer and me that monies could be raised by the sale of Scorpion stock. Witz further
11 stated that in order to sell Scorpion stock, Scorpion's revenues needed to be increased.

12 d. In early 1991 Bauer and I attended a meeting with Witz and
13 John T. ("Jack") Dawson in which it was agreed that shell companies be used to pretend
14 to be buyers of Scorpion products. All parties agreed that Scorpion stock would be sold
15 through fictitious companies in Hong Kong and other parts of the world and returned to
16 Scorpion as payments for the fictitious accounts receivable. Accordingly, I authorized
17 Dawson to acquire two Hong Kong shell companies to pretend to be buyers of Scorpion
18 products. Dawson in turn sought the assistance of Michael Horne in Hong Kong, who
19 provided Rykoff Ltd., and Polastra Ltd., both of which were Hong Kong registered
20 limited liability companies, and neither of which had any assets, employees, or business
21 operations. As a part of and in furtherance of the scheme to defraud, between in or about
22 March, 1991, and December of 1991, at my direction and at that of Tracy Marsh, and with
23 the agreement and understanding of Bauer, Dawson and Witz, Eric Brown recorded over
24 \$4.3 million in supposed sales by Scorpion to Rykoff and Polastra of its products known
25 as SRV and SRVSPARC software and internally developed menu driven software
26 technology. These sales were sham transactions designed to inflate the assets of
27 Scorpion.

1 e. In the fall of 1991, Bauer and I knew that more sham customers
2 were needed for Scorpion, so we authorized Dawson to acquire more companies to be
3 used as sham customers of Scorpion. Through Arner Fiduciaria in Lugano, Switzerland,
4 two European companies were acquired by Dawson. These companies were called
5 Largo International Ltd. and Stevenage Consultants Ltd. Neither Largo nor Stevenage
6 had any employees, assets, or business operations. In December of 1991, Bauer, Dawson
7 Witz and I agreed that additional shell companies would be acquired to pretend to be
8 Scorpion customers. Through Michael Home, Dawson provided three additional
9 European shell companies, Wolfdale Ltd., Washington International Associates and
10 Carswell Investments Ltd. None of these entities had any assets, employees, or business
11 operations either. Their purpose was similar to that of Largo and Stevenage, namely to
12 act as sham customers of Scorpion. Thereafter, through Dawson we acquired Northport
13 Holdings, Ltd., Campbell Technology, Enersur SA and Cocodrill Oil SA to act as sham
14 customers of Scorpion.

15 f. Between mid 1991 and mid 1992, with the knowledge and agreement
16 of Barry Witz, Jack Dawson, Richard Bauer and myself, among others, over six million
17 dollars of software sales were recorded on Scorpion's books as having been made to the
18 above described shell companies. These sales were incorporated into the financial
19 statements of Scorpion and into the filings Scorpion was required to make with the SEC,
20 all of which I signed as President. When I signed the SEC filings I knew they were false.

21 g. In order to prevent discovery of the fraud, between September, 1991,
22 and June, 1993, I personally lied to Scorpion's auditors, and I requested Eric Brown and
23 Dawson to obtain false audit confirmations purporting to verify receivables owing to
24 Scorpion by the shell companies. The purpose of these audit confirmations was to
25 deceive the auditors into believing that the so called customers were bona fide purchasers
26 for value of the Scorpion SRV software. I knew and intended that these false audit
27 confirmations would be relied on by Scorpion's auditor in its preparation of Scorpion's

1 financial statements. I knew then that Scorpion was a public company, and that its
2 financial statements would be filed with the United States Securities and Exchange
3 Commission and disseminated to and relied on by the investing public.

4 **Creation of False Revenue on Sales to Domestic Companies**

5 h. As a part of the scheme to defraud, between in or about July, 1991,
6 and continuing through in or about January 1992, Eric Brown, Kelly Lee, and Steven
7 Kolb created false sales by Scorpion of its products to domestic companies as well. The
8 purpose of this scheme was to increase the appearance of domestic revenues of Scorpion.
9 I participated in an initial meeting or two in which this was discussed and knew generally
10 of it. The actual execution of the scheme was left to Brown, Lee and Kolb.

11 **Sham Purchase of Technology from Rykoff**

12 i. In order to pay for the fictitious receivables described above, it was
13 necessary to generate cash. In or about March, 1991, I agreed with Witz, Dawson and
14 Bauer that Scorpion would issue 4 million shares of its stock to a shell company to be
15 formed in Hong Kong. The company later was identified to me as Rykoff. In order to
16 justify the issuance of the shares, Scorpion purported to enter into an agreement with
17 Rykoff dated April 1, 1991, whereby Rykoff would transfer technology to Scorpion in
18 return for payment of \$2 million in the form of 4 million shares of Scorpion stock valued
19 at \$.50 per share. The agreement further purported to allow Scorpion a period of six
20 months in which to evaluate the technology. Michael Home signed the agreement on
21 behalf of Rykoff at Jack Dawson's request. I signed the agreement on behalf of Scorpion.

22 j. This contract was drafted in or about March, 1991, by Witz,
23 Dawson and me. Dawson suggested that he take the contract to Hong Kong and get
24 Michael Home to sign it on behalf of Rykoff. At the time this contract was prepared and
25 signed, Richard Bauer, Barry Witz, Jack Dawson, Michael Home and I all knew that
26 Rykoff neither possessed scanner technology, nor was a legal owner of it. The sale of
27 technology by Rykoff to Scorpion was a sham transaction designed to increase the assets

1 of Scorpion. This in turn would help support the price of the stock which was then being
2 sold under the supervision of Witz and Dawson and thereby provide a source of funds to
3 pay for the fictitious receivables.

4 k. This agreement was disclosed by Scorpion in a Form 8-K, dated
5 September 30, 1991, which I signed and filed with the SEC on October 1, 1991. The
6 Form 8-K stated that "On August 2, 1991, the Company completed evaluation and
7 formally purchased a technology ("RPI")... [which is] an image processing system... . The
8 Company had previously issued 4,000,000 of its Class A common shares, valued at \$.50
9 per share, for the purchase of said technology. For the past several months, the Company
10 had tested, evaluated and reviewed the RPI technology to determine its compatibility with
11 SRV products... ." The foregoing statement was false and I knew it when I made the
12 filing with the SEC.

13 l. As a part of the scheme and to convince Scorpion's independent
14 auditors that Scorpion's acquisition of technology from Rykoff was a legitimate
15 transaction, between late 1991 and in or about the spring of 1992, my brother Tracy
16 Marsh caused an engineering firm to create a back-dated set of design documents bearing
17 Rykoff's name which purported to be plans for the scanner which Scorpion bought from
18 Rykoff. I knew of and agreed with the creation of false documents to deceive the
19 auditors. Tracy provided these false documents to the auditors to prevent detection of the
20 scheme.

21 m. In addition, I agreed that Eric Brown should prepare a false scanner
22 evaluation confirmation to be given to the auditors. Eric Brown arranged for such a false
23 evaluation confirmation, which was purportedly prepared by Mario Andrade in Bolivia.
24 To my knowledge this false evaluation confirmation was provided to the auditors.

25 n. Notwithstanding that the scanner acquisition contract between
26 Scorpion and Rykoff stated that Scorpion had six months from April 1, 1991, to evaluate
27 the scanner technology, in fact the 4 million shares issued to Rykoff were issued in April
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1 of 1991 and sold through various broker dealers. I knew that the sales of stock based on
2 the alleged scanner exchange with Rykoff were arranged through Witz, Dawson and
3 Horne. I knew some of the brokers involved: Green Cohn, Smith Benton and Hughes,
4 owned by Michael Zaman. The proceeds of these fraudulent sales were remitted to Horne
5 in Hong Kong, who in turn sent them to Scorpion. Pursuant to the agreement described in
6 paragraph 2(d) above, they were booked as payments for receivables for the phony
7 software sales.

8 Creation of False Investments in Century

9 o. As a part of and in furtherance of the scheme to defraud, between in
10 or about July 1991, through December 1991, Richard Bauer, my brother Tracy Marsh and
11 I directed Scorpion to transfer approximately \$1.25 million to Century Funding, and
12 directed Eric Brown to record the transactions as "investments" in Century. In fact the
13 monies were not "investments" in Century, but rather Century was used as a conduit for
14 Scorpion funds. For example, on or about December 16, 1991, Richard Bauer, Jack
15 Dawson and I conducted a transaction whereby \$700,000 that had been sent to Century as
16 an investment was wire transferred to Switzerland to an account maintained by Carl
17 Burckhardt. With my agreement and that of Bauer, Dawson instructed Burckhardt to wire
18 transfer the funds back to Scorpion disguised as payments for software from Largo and
19 Stevenage. Our intent was to promote the carrying on of the securities fraud in which we
20 had been engaged for over nine months.

21 p. Richard Bauer, Dawson and I discussed the need to conceal the fact
22 that Scorpion's own funds were used to pay fictitious receivables and that the
23 "investments" in Century were not bona fide assets. In the spring of 1992 Leonard
24 Danna, an auditor, told me that he had heard Century was in financial trouble and that in
25 connection with the audit he wanted to make sure that Scorpion's "investments" in
26 Century were good assets. Thereafter, Bauer admitted to me that he and Brown had
27 created false Century financial statements, given them to Danna, and that Danna was

1 satisfied.

2 **Creation of Overvalued Asset: the Osicom Purchase**

3 q. In or about mid July 1992, Jack Dawson and I negotiated with Barry
4 Witz and Par Chadha the purchase by Scorpion of 99% of the shares of Osicom
5 Technologies, U.K. Ltd, ("Osicom UK") from Osicom Technologies, Inc., ("Osicom
6 US"), its parent company. Osicom UK was a company located in Wales which
7 manufactured computer products. At that time, it was represented to me that Osicom UK
8 was a company with over \$25 million in annual revenue and a net worth of over \$7.5
9 million but also substantial debt. The purchase was effective on or about August 26,
10 1992, and was structured on the advice of, among others, Barry Witz and Dawson. In the
11 first stage of the transaction, Saturn Enterprises, Ltd., ("Saturn"), acquired the Osicom
12 UK stock (as well as 21% of Osicom US, the parent company) for a promissory note in
13 the amount of \$1.25 million and assumption of \$2.5 million of Osicom US debt. Saturn
14 was a British Virgin Islands company with no assets, employees or operations. Defendant
15 Mario Andrade was supposedly a principal of Saturn.

16 r. In the second stage of the transaction, immediately after Saturn
17 bought the Osicom UK shares, Scorpion bought Saturn's interest in Osicom UK for a
18 promissory note in the amount of \$1.25 million and 10 million shares of Scorpion
19 common stock. Scorpion reported the transaction in a Form 8-K signed by me and filed
20 with the SEC on or about August 26, 1992. The 8-K disclosed that Scorpion had
21 acquired the Osicom stock for a purchase price of \$7,750,000, to be paid by 6,933,333
22 shares of Scorpion common stock valued at \$.93 per share and the issuance of a
23 promissory note for \$1.25 million. The amended Form 8-K filed with the SEC on or
24 about December 2, 1992, also signed by me, disclosed that Scorpion had acquired the
25 Osicom stock for a purchase price of \$7,750,000, to be paid by 10,000,000 shares of
26 Scorpion common stock valued at \$.65 per share and the issuance of a promissory note
27 for \$1.25 million.

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1 s. At the time of Scorpion's purchase of Osicom UK shares,
2 I knew that Scorpion had paid a purchase price greater than that paid by Saturn for the
3 Osicom UK shares. I also knew and intended that the Scorpion shares given to Saturn for
4 Osicom UK would be sold by Saturn to the public to pay its note and debt obligation to
5 Osicom US. Jack Dawson and Andrade controlled the shares issued to Saturn. Dawson
6 supervised the sale of these shares and the distribution of the proceeds. At that time I also
7 understood that a substantial number of the shares paid by Scorpion to Saturn in the
8 Osicom UK transaction would be sold and the proceeds returned to Scorpion for working
9 capital. In late 1992 and early 1993 Richard Bauer told me that proceeds of the sales of
10 the Scorpion shares issued in the Saturn/Osicom deal had been sent to Scorpion through
11 Century.

12 t. As a part of and in furtherance of the conspiracy, I distributed and
13 caused the distribution of the materially false and misleading information about the
14 business operations and financial condition and prospects of Scorpion to the SEC, to the
15 public and to securities brokers and dealers.

16 u. While disseminating the false and misleading information regarding
17 Scorpion described above, in addition to the fraudulent sales of Scorpion stock through
18 Rykoff and Saturn described above, Richard Bauer, Barry Witz, Jack Dawson and I,
19 among others, assisted the sales of the Scorpion stock issued to HK Freeland and
20 Company, Pacific Rim Equity Advisors, and G&C Partners while the public had been
21 given the materially false information about Scorpion's financial condition and business
22 operations described above.

23 v. In or about January, 1992, Richard Bauer and I caused
24 Scorpion to issue 166,667 shares of Scorpion common stock to Adera Anstalt, a
25 Liechtenstein company. In or about February 1992, at our direction Adera Anstalt sold
26 these shares to numerous investors for over \$618,000. As a part of the scheme to defraud,
27 most of the proceeds from the sales of this stock were wired from Adera's brokerage
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1 account to Chekiang First Bank, Ltd. (Hong Kong), then subsequently transferred back to
2 Scorpion in the United States, and recorded by Scorpion as payment for the fictitious
3 accounts receivable supposedly owed to Scorpion.

4 w. In or about April, 1992, Richard Bauer and I caused Scorpion to
5 issue four million shares of Scorpion stock to an entity known as FRM Ltd., an English
6 company I understood to be controlled by Barry Witz. Bauer and I knew and understood
7 that FRM would not pay Scorpion for the Scorpion shares unless and until the shares had
8 been sold. Between in or about April, 1992 and February, 1993, FRM sold these shares
9 to numerous investors for millions of dollars.

10 x. In or about May, 1992, Bauer and I directed that Scorpion issue one
11 million shares of stock to an entity known as Mayfair Financial Ltd., a Panamanian
12 corporation which I understood to be controlled by Barry Witz, in return for "consulting
13 services." Between on or about June 3, 1992 and June 12, 1992, Mayfair Financial, Ltd.
14 sold these shares to numerous investors for a total of over \$2.1 million. As a part of the
15 scheme to defraud, over \$1.2 million of the proceeds of the sales of Scorpion stock issued
16 to Mayfair Financial Ltd. were transferred back to Scorpion through an account in the
17 name of Landor Holdings, Ltd., a Guernsey shell company, and, on my instructions, were
18 recorded by defendant Brown as "payments" on fictitious accounts receivable.

19 y. At all times during the sale of the Scorpion securities described
20 above, by virtue of our scheme to defraud, the public market had been given materially
21 false information about Scorpion's financial condition and business operations.

22 z. On or about July 22, 1993, I signed and caused to be filed a
23 Scorpion Form 10-K for the year ending 1992, which report was also signed by Richard
24 Bauer, and contained untrue statements of material fact and omitted to state material facts
25 necessary to make the statements made, in light of the circumstances under which they
26 were made, not misleading, in that, among other things:

27 a. the report falsely stated that Scorpion had experienced a decline
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1 in software revenues due to sales returns of its SRV software products as a result of an
2 adverse litigation verdict;

3 b. the report falsely stated Scorpion acquired Osicom U.K. for a
4 purchase price of \$7,750,000, to be paid by 10,000,000 Scorpion shares valued at \$.65 per
5 share and the issuance of a promissory note for \$1.25 million.

6 c. the report falsely stated that on April 27, 1993, the FBI conducted
7 a search of its offices pursuant to a judicially authorized search warrant; that the warrant
8 references statements made by two former employees and questions the validity of \$6.7
9 million SRV sales from September 1991 and June 1992; and that Scorpion's auditors had
10 performed additional procedures with respect to \$2.8 million in software shipments in
11 1991 and "have not found any evidence to substantiate the allegations made".

12 D. At the time this Form 10-K was filed, the Bauer and I knew that:

13 (1) the decline in revenue experienced by Scorpion was not as a
14 result of an adverse litigation verdict;

15 (2) Scorpion's purchase of Osicom U.K. had been structured to
16 permit the issuance of Scorpion shares to Saturn for sale for
17 the benefit of Scorpion; and

18 (3) The Form 10K materially overstated the past revenues,
19 earnings, and assets of Scorpion.

20 3. I agree to give up all rights that I would have if I chose to proceed to trial,
21 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
22 examine government witnesses; to remain silent or testify; to move to suppress evidence
23 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the
24 government; and to pursue any affirmative defenses and present evidence.

25 4. I agree to give up my right to appeal my conviction, the judgment, and
26 orders of the Court. I also agree to waive any right I may have to appeal my sentence.

27 5. I agree not to file any collateral attack on my conviction or sentence,
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1 including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced,
2 except for a claim that my constitutional right to the effective assistance of counsel was
3 violated.

4 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
5 entered.

6 7. I agree to pay restitution for all losses caused by the scheme or offenses
7 with which I was charged and agree that the amount of restitution will not be limited to
8 the loss attributable to the count(s) to which I am pleading guilty. The parties agree that
9 if at any time before restitution is fully made there is a material change in the valuation of
10 the loss, then either party may seek from the Court an adjustment in the amount of
11 restitution. I agree that, before or after sentencing, I will, upon request of the Court, the
12 government, or the U.S. Probation Office, provide accurate and complete financial
13 information, release funds and property under my control, submit sworn statements and
14 give depositions under oath concerning my assets and my ability to pay, surrender assets I
15 obtained as a result of my crimes, and make a good faith effort to pay amounts I am
16 ordered to pay as a fine, forfeiture, or restitution. I agree to pay the special assessment at
17 the time of sentencing.

18 8. I agree to cooperate with the U.S. Attorney's Office before and after I am
19 sentenced. My cooperation will include, but will not be limited to, the following:

- 20 a. I will respond truthfully and completely to any and all questions put
21 to me, whether in interviews, before a grand jury or at any trial or
22 other proceeding;
- 23 b. I will provide all documents and other material asked for by the
24 government;
- 25 c. I will testify truthfully at any grand jury, court or other proceeding as
26 requested by the government;
- 27 d. I will surrender any and all assets acquired or obtained directly or
28 indirectly as a result of my illegal conduct and I specifically agree to
remit the proceeds from the sale of the premises known as 50
Hayden Bridge Way, Springfield, Oregon to the registry of the Court
as partial payment toward restitution;

- 1 e. I will request continuances of my sentencing date, as necessary, until
2 my cooperation is completed;
3 f. I will tell the government about any contacts I may have with any
4 co-defendants or subjects of investigation, or their attorneys or
5 individuals employed by their attorneys;
6 g. I will not reveal my cooperation, or any information related to it, to
7 anyone without prior consent of the government;
8 h. I will participate in undercover activities and obey all instructions
9 given to me by the U.S. Attorney's Office and federal agents
10 conducting the investigation..

11 9. I agree that the government's decision whether to file a motion pursuant to
12 USSG §5K1.1, as described in the government promises section below, is based on its
13 sole and exclusive decision of whether I have provided substantial assistance and that
14 decision will be binding on me. I understand that the government's decision whether to
15 file such a motion, or the extent of the departure recommended by any motion, will not
16 depend on whether convictions are obtained in any case. I also understand that the Court
17 will not be bound by any recommendation made by the government.

18 10. I agree not to commit or attempt to commit any crimes before sentence is
19 imposed or before I surrender to serve my sentence; violate the terms of my pretrial
20 release (if any); intentionally provide false information or testimony to the Court, the
21 Probation Office, Pretrial Services, or the government; or fail to comply with any of the
22 other promises I have made in this Agreement. I agree that, if I fail to comply with any
23 promises I have made in this Agreement, then the government will be released from all of
24 its promises, but I will not be released from my guilty plea.

25 11. If I am prosecuted after failing to comply with any promises I made in this
26 Agreement, then (a) I agree that any statements I made to any law enforcement or other
27 government agency or in Court, whether or not made pursuant to the cooperation
28 provisions of this Agreement, may be used in any way; (b) I waive any and all claims
under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal
Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal statute or rule,

1 to suppress or restrict the use of my statements, or any leads derived from those
2 statements; and (c) I waive any defense to any prosecution that it is barred by a statute of
3 limitations, if the limitations period has run between the date of this Agreement and the
4 date I am indicted.

5 12. I agree that this Agreement contains all of the promises and agreements
6 between the government and me, and I will not claim otherwise in the future.

7 13. I agree that this Agreement binds the U.S. Attorney's Office for the
8 Northern District of California only, and does not bind any other federal, state, or local
9 agency.

10 The Government's Promises

11 14. The government agrees to move to dismiss any open charges pending
12 against the defendant in the captioned indictment at the time of sentencing.

13 15. The government agrees not to file or seek any additional charges against the
14 defendant that could be filed as a result of the investigation that led to the pending
15 indictment.

16 16. The government agrees not to use any statements made by the defendant
17 pursuant to this Agreement against him, unless the defendant fails to comply with any
18 promises in this agreement. The government may, however, tell the Court and the U.S.
19 Probation Department about the full extent of the defendant's criminal activities in
20 connection with the calculation of the Sentencing Guidelines.

21 17. If, in its sole and exclusive judgment, the government decides that the
22 defendant has cooperated fully and truthfully, provided substantial assistance to law
23 enforcement authorities within the meaning of U.S.S.G. §5K1.1, and otherwise complied
24 fully with this Agreement, it will file with the Court a motion under §5K1.1 and/or 18
25 U.S.C. §3553 that explains the nature and extent of the defendant's cooperation and
26 recommends a downward departure.

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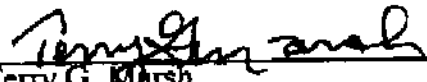
1 The Defendant's Affirmations

2 19. I confirm that I have had adequate time to discuss this case, the evidence,
3 and this Agreement with my attorney, and that he has provided me with all the legal
4 advice that I requested.

5 20. I confirm that while I considered signing this Agreement and, at the time I
6 signed it, I was not under the influence of any alcohol, drug, or medicine.

7 21. I confirm that my decision to enter a guilty plea is made knowing the
8 charges that have been brought against me, any possible defenses, and the benefits and
9 possible detriments of proceeding to trial. I also confirm that my decision to plead guilty
10 is made voluntarily, and no one coerced or threatened me to enter into this agreement.

11
12 Dated: 1-8-01


Terry G. Marsh
Defendant

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17
18
19 Dated: January 8, 2001

ROBERT S. MUELLER, III
United States Attorney

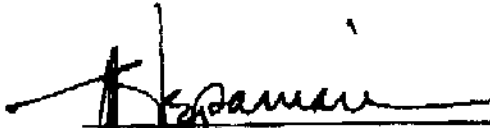

Mark N. Zanides
Assistant United States Attorney

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23 **Defense Counsel's Attestation**

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25 I have fully explained to my client all the rights that a criminal defendant
26 has and all the terms of this Agreement. In my opinion, my client understands all the
27

1 terms of this Agreement and all the rights he is giving up by pleading guilty, and, based
2 on the information now known to me, his decision to plead guilty is knowing and
3 voluntary.

4
5 Dated: January 8, 2001


Michael Stepanian
Attorney for Defendant